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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 164

AYAKO HONDA, ET AL., PETITIONERS

v.

NICHOLAS DEB. KATZENBACH,
ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 17) is reported *sub nom. Kondo* v. *Katzenbach* at 356 F. 2d 351. The district court did not render an opinion.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 1966 (Pet. 46). Petitioners' timely

motion for rehearing *en banc* was denied on February 24, 1966 (Pet. 47). The petition for a writ of certiorari was filed on May 23, 1966. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Petitioners failed to seek judicial review of respondent's denial of their debt claims "within sixty days," as prescribed by section 34 of the Trading With the Enemy Act. The question presented is whether the court of appeals erred in ruling that the Attorney General was not barred by reason of equitable estoppel from pleading the statute of limitations.

STATUTE INVOLVED

Section 34 of the Trading With the Enemy Act, 50 U.S.C. App. 34, provides in pertinent part:

Section 34(a):

> Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer * * *.
>
> * * * *

Section 34(d):

Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 36 hereof [section 36 of this Appendix], paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. * * *.

* * * *

Section 34(f):

If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may

be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the United States District Court for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. * * * The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

* * * *

Section 34(i):

The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this

section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: * * *.

STATEMENT

Section 34 of the Trading with the Enemy Act, 50 U.S.C. App. 34, authorizes the Alien Property Custodian [1] to satisfy, out of the proceeds of property vested under the Act, the claims of certain creditors against the former owners of such property. Where, as in the instant situation, the aggregate of debt claims exceeds the money available to pay them, the Act requires the Custodian to prepare and mail to each claimant a final "schedule" of claims allowed and his proposed payments. 50 U.S.C. App. 34(f). Claimants dissatisfied with the Custodian's proposal may then "file * * * a complaint for review of such schedule" in the United States District Court for the District of Columbia "[w]ithin sixty days after the date of mailing of such schedule * * *," *Ibid.* Section 34 expressly provides that this is the "sole relief and remedy available" to any person seeking satisfaction of a debt claim out of property vested by the Custodian and that "suits for the satisfaction of debt claims shall not be instituted, prosecuted or further maintained except in conformity with this section." 50 U.S.C. App. 34(i).

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[1] By Executive Order No. 9788 of October 14, 1946, 11 F.R. 11981, the respondent Attorney General succeeded to the powers and duties of the Alien Property Custodian.

Petitioners are five individuals whose debt claims were finally disallowed by the Custodian in October of 1961 (J.A. 34).[2] (As to the sixth petitioner, Mrs. Masae Kondo, see note 5, *infra*.) They did not institute the present suits for judicial review of the Custodian's decision until May and July of 1964, more than two and one-half years later (J.A. 1). The district court dismissed petitioners' suit as untimely, rejecting their contention that any action taken by government officials estopped respondent from defending on the ground of untimeliness. The court of appeals affirmed, one judge dissenting. The only issue presented here is whether the court of appeals erred in affirming the district court's ruling that petitioners' action was barred as untimely.

This litigation stems from the action of the Alien Property Custodian in vesting the American assets of the Japanese-owned Yokohama Specie Bank, Ltd., as enemy property. At the time of the vesting, petitioners were depositors, and therefore creditors, of that bank. After the Second World War, the Japanese liquidator of the Yokohama Specie Bank and the bank's successor, the Bank of Tokyo, Ltd., continued to honor, and pay with interest, the face amounts of certificates of deposit such as those held by petitioner. Such payments were made in *yen*, however, the value of which had declined from $.234 before the Second World War to a post-war exchange rate of 361.55 to the dollar.

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[2] "J.A." refers to the printed Joint Appendix filed in the court of appeals, copies of which petitioners have filed with the clerk under Rules of this Court.

Petitioners filed debt claims with the Alien Property Custodian under Section 34 of the Trading with the Enemy Act, seeking to recover the pre-war value of their *yen* deposits. More than ten thousand claims were filed against the vested assets of the Yokohama Specie Bank, Ltd., seventy-five hundred by holders of *yen* deposit certificates similar to petitioners'. Because the aggregate value of these claims exceeded the value of the seized assets of the Bank from which payment could be made, the Alien Property Office proceeded in accordance with section 34(f) of the Act. After extensive hearings (which also concerned similar debt claims against the vested assets of the Sumitomo Bank), respondent took the position, adopted by the banks in Japan, that the certificates of deposit underlying the debt claims in question represented obligations payable in *yen* in Japan. Therefore, following the "Judgment Day" rule laid down by the Court in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517, respondent ruled that all allowable claims would be paid at the post-war exchange rate of 361.55 *yen* to the dollar.

Notice of that ruling, together with the amount of each claim allowed, was then sent by registered mail to the claimants in 1958 and 1959 (Pet. 33, J.A. 6, 29). In order to prepare the final "schedule" required by Section 34(f), those letters also requested that claimants submit to the Custodian their original certificates of deposit or a notarized statement explaining why the certificates could not be submitted and that payment had not previously been received

from the Japanese sources mentioned above. If the certificates or statements were not submitted within a period prescribed in the letter, the claimants were advised that their claims would be treated as abandoned and dismissed. In addition, those letters specifically informed each claimant of his right not only to file with the Custodian "your objections to the allowance of the claim in the amount stated", but also of his right to appeal to the courts under Section 34 of the Trading With the Enemy Act from the Custodian's final ruling on the amount of his claim (Pet. 34):

> Within sixty days after the issuance of the schedule, any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Copies of these letters were sent not only to the named petitioners but to their counsel as well (Pet. 36; J.A. 2, 9 and 32).

Petitioners admittedly received the letters described (J.A. 2). However, they did not submit certificates or notarized statements; nor did they file any objection to the Custodian's ruling with the Office of Alien Property. Their claims were therefore dismissed as abandoned. In October of 1961, the "Final Schedule" with respect to claims against the Yokohama Specie Bank, was issued under Section 34(f) of the Act; copies were correctly sent to these five petitioners by

registered mail as Section 34(f) required (J.A. 34). A letter from the Deputy Director of the Office of Alien Property, which accompanied the final schedule, advised each recipient that (J.A. 34): "If your claim is not shown on the Schedule, it is for the reason that the claim has been dismissed and disallowed by this Office." Petitioners' names were not on the schedule. Each was expressly advised by that letter once again of his right to have the Custodian's decision reviewed in court (J.A. 34, emphasis added):

> This Schedule is being served by registered mail on all claimants listed therein, as well as on claimants whose claims have been dismissed and disallowed. *Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of this Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule, naming the Attorney General as defendant.* * * *

None of the five petitioners filed suit within the sixty-day time limit fixed by the Act and described in the letters.

Although none of the petitioners timely sought judicial review of the Final Schedule of payments, other claimants did challenge the Custodian's decision in the district court. A complaint for such review was timely filed under Section 34(f) on behalf of the more than eighteen hundred Yokohama Specie Bank claimants who did submit their certificates to the

Custodian and whose claims were allowed on the final schedule at the post-war *yen* rate of exchange. *Abe* v. *Kennedy*, (C.A. No. 2529-61, D. D.C.). That Complaint asserted that the claims should have been allowed by the Custodian at the pre-war *yen* exchange rate. Proceedings in *Abe* were postponed, however, pending the outcome of *Aratani* v. *Kennedy* (C.A. No. 3164-58, D. D.C.) which raised the identical issue. That case had been previously instituted by persons whose debt claims under Section 34 against the vested funds of the Sumitomo Bank, Ltd., had also been allowed by the Custodian only at the post-war *yen* exchange rate.

On July 7, 1961, the district court rendered judgment in favor of the government in *Aratani;* on March 28, 1963, the court of appeals affirmed, 317 F. 2d 161 (C.A. D.C.); and, on October 21, 1963, this Court granted certiorari, 375 U.S. 877. Thereafter, the claimants and the Attorney General entered into a compromise settlement of both the *Abe* and the *Aratani* cases, which settlement was approved by the district court on March 18, 1964, 228 F. Supp. 706.[3] Under that compromise, the Yokohama Specie Bank claimants received approximately half of the amounts they claimed, together with an award for attorney's fees.[4] Not being parties to the *Abe* litigation, petitioners were not included in the settlement.

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[3] Following that approval, this Court dismissed the writ of certiorari previously granted in *Aratani*. 380 U.S. 938.

[4] Because their claims exceeded the funds available to pay them under the compromise, the Sumitomo claimants re-

After this compromise settlement, petitioners demanded similar treatment of their own claims, notwithstanding their failure either to pursue those claims before the Custodian or to institute timely suit in the courts under Section 34. Respondent denied petitioner's request, taking the position that under Section 39 of the Act, 50 U.S.C. App. 39, the moneys remaining in the Yokohama Specie Bank, Ltd., account in the Alien Property office should be transferred to the War Claims Fund in the Treasury. Moneys in that Fund are used by the Foreign Claims Settlement Commission to pay the war claims of United States citizens who suffered damage as a result of German and Japanese military operations in World War II.

Petitioners then commenced the instant suits in May and July of 1964, in their own behalf "and on behalf of all others similarly situated." This took place over two and one half years after the prescribed sixty-day period had expired. On March 31, 1965, the district court granted respondents' motion to dismiss the actions "because * * * not commenced within the time set forth in Section 34(f) of the Trading With the Enemy Act" (J.A. 36).

On appeal from that dismissal, petitioners' principal contention was that the government's conduct estopped it from raising the statute of limitation defense (Pet. 10-11). The court of appeals (one judge dissenting) held that the doctrine of equitable estoppel does not run against the United States to toll the

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ceived only 25% of their claims. See 228 F. Supp. at 708 and 50 U.S.C. App. 34(d).

period of limitations specified by the Trading With the Enemy Act (Pet. 25); and that, in any event, the court did "not believe * * * that the appellee 'by his representations or his conduct induced' the appellants to give appellee any advantage" (Pet. 26). Rejecting petitioners' contentions, the court below noted that respondent had in fact taken "meticulous" and "painstaking" care to inform petitioners of his adverse decision on their claims and of the judicial avenue for relief open to them if dissatisfied with his rulings (Pet. 24-25). It concluded (J.A. 25):

> failure to act cannot, we feel, be attributed to any misrepresentation, either affirmatively or negatively, by the appellee. Whatever may have prompted the appellants' action, or lack of action, we conclude it was not any misleading act or inaction on the part of the Government.

An application for rehearing *en banc* was denied (one judge dissenting, Pet. 47).[5]

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[5] In the same opinion, the court of appeals also affirmed the district court's dismissal of an action brought by Masaru Okamoto and others whose claims had been disallowed by the Custodian on the ground that they were ineligible for the return of their money under Section 34(a) of the Trading with the Enemy Act because they had been interned as enemy aliens, 50 U.S.C. App. 34(a) (No. 19,283, C.A.D.C., Pet. 28). Appellants in that case have not joined in this petition for certiorari.

The instant petition for certiorari was also filed on behalf of a sixth petitioner, Mrs. Masae Kondo (case No. 19,282 in the court of appeals.) Unlike the other five petitioners, Mrs. Kondo did not receive the 1958 letter from the Custodian requesting submission of her original certificates of deposit together with the advice that her claim would be treated as

ARGUMENT

Notwithstanding the express provisions of the Trading With the Enemy Act providing that the sole relief and remedy for debt claims under that Act is an action brought within sixty days of the administrative denial of those claims, petitioners waited more than two and one-half years before filing these suits for judicial review. They seek to avoid the Congressional directive that "suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section" by urging that respondent was "equitably estopped" from raising that defense. This argument was rejected by the court below both on the ground that the doctrine of equitable estoppel cannot enlarge

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abandoned if she did not do so. That letter had, inadvertently, been misaddressed by the Alien Property Office. The "Final Schedule" and accompanying letter advising that her claim had been disallowed and of her right to seek judicial review within sixty days were correctly sent by registered mail to the address Mrs. Kondo had designated. Those papers were not returned by the Post Office as undeliverable. However, Mrs. Kondo informs us that in fact she did not receive that notice either, apparently because in the interim she had moved without informing the Alien Property Office of her changed address. Mrs. Kondo asserts that, had she received any notice, she would have submitted her certificates to the Custodian and timely prosecuted her claim, just as she had done with her similar debt claim against the vested assets of another Japanese Bank (J.A. 50-51). It seems apparent that, but for the unfortunate confusion as to Mrs. Kondo's correct mailing address, she would have been included in the *Abe* settlement. The Attorney General has accordingly advised counsel for Mrs. Kondo that he stands ready to make payment to her on the basis of the *Abe* settlement, as she seeks in her complaint (J.A. 43).

the limitations provisions of that Act, and on the ground that "the record does not support [that] contention" factually (Pet. 26). We believe that the decision of the court of appeals is correct. In addition, it is clear that the case does not present a recurring issue.

1. These suits against respondent, as successor to the Alien Property Custodian, are in reality actions against the United States.[6] It is well settled that Congress may prescribe limitations and conditions upon which suits against the government may be brought and that failure to comply with those limitations is jurisdictional.[7] Suits under the Trading With the Enemy Act are no exception.[8]

Petitioners do not deny that they failed to seek judicial review "within sixty days" as required by Congress. Rather, they invoke the doctrine of "equitable estoppel." That doctrine rests on the maxim that no man may take advantage of his own wrong; thus, in actions between private litigants, one who

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[6] *Banco Mexicano* v. *Deutsche Bank*, 263 U.S. 591, 602-603; *Codray* v. *Brownell*, 207 F.2d 610 (C.A. D.C.), certiorari denied, 347 U.S. 903.

[7] *Soriano* v. *United States*, 352 U.S. 270, 276; *United States* v. *Sherwood*, 312 U.S. 584, 590-591; *Munro* v. *United States*, 303 U.S. 36.

[8] See *Soriano* v. *United States*, *supra*, 352 U.S. at 276; *Legerlotz* v. *Rogers*, 266 F. 2d 457 (C.A. D.C.), certiorari dismissed, 362 U.S. 938; *Brownell* v. *Nakashima*, 243 F.2d 787, 792 (C.A. 9), certiorari denied, 355 U.S. 872; *Cisatlantic Corporation* v. *Brownell*, 131 F. Supp. 406, 407 (S.D. N.Y.), affirmed, 222 F.2d 957 (C.A. 2).

has caused his opponent to forbear suit by lulling him into believing he has a longer time in which to commence his action may not later defend on the ground that the statute of limitations has in fact expired. *Glus* v. *Brooklyn Eastern Terminal*, 359 U.S. 231, 232-233. However, it has been repeatedly held that the doctrine may not be invoked to toll the period of limitations in suits against the government; the statutory limitations governing such actions are jurisdictional and may not be waived by conduct of agents of the United States. *E.g.*, *Munro* v. *United States*, 303 U.S. 36, 41; *United States* v. *Michel*, 282 U.S. 656; *Pittman* v. *United States*, 341 F.2d 739 (C.A. 9), certiorari denied, 382 U.S. 941; Accord: *Automobile Club* v. *Commissioner*, 353 U.S. 180, 187.[9] Invocation of that doctrine to toll the period of limitations under the Trading With the Enemy Act would seem particularly inappropriate since the Act expressly provides that the "sole relief and remedy available"

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[9] To the same effect, see *Anderegg* v. *United States*, 171 F.2d 127, 128 (C.A. 4), certiorari denied, 336 U.S. 967; and *Wallace* v. *United States*, 142 F.2d 240 (C.A. 2), certiorari denied, 323 U.S. 712. Cf. *Andreae* v. *Redfield*, 98 U.S. 225. *Stockstrom* v. *Commissioner*, 190 F.2d 283 (C.A.D.C.), and *Vestal* v. *Commissioner*, 152 F.2d 132 (C.A.D.C.), cited by petitioners, were suits by the United States for the collection of taxes, not suits against the United States. Indeed, the decision in *Stockstrom*, *supra*, has been expressly disapproved by this Court. *Automobile Club* v. *Commissioner*, 353 U.S. 180, 183-184. In *N. V. Philips, etc.* v. *Atomic Energy Commission*, 316 F.2d 401 (C.A.D.C.), also relied on by petitioners, the court ruled that the general limitation period of 28 U.S.C. 2401(a) for bringing suit against the United States did not govern the time within which an administrative claim for compensation had to be presented to the Commission.

for review of administrative decisions under the Act is an action brought within sixty days pursuant to section 34(f), and that suits shall not be instituted except in conformity with that section. 50 U.S.C. App. 34(f) and 34(i). The only other pertinent decision under the Trading With the Enemy Act similarly holds that a claim of equitable estoppel is unavailable. *Legerlotz* v. *Rogers*, 266 F.2d 457 (C.A.D.C.), certiorari dismissed, 362 U.S. 938. There is no occasion for review of that issue now, when the program under the Act has been substantially completed.[10]

2. In all events, as the court of appeals ruled, petitioner has made no factual showing which would warrant a holding of estoppel even as between private litigants. Petitioners concede, as they must, that neither respondent nor any of his agents at any time advised petitioners that there was no need for them to avail themselves of judicial review in order to preserve their claims. On the contrary, the only communications from respondent to petitioners written prior to the expiration of their statutory time to appeal to the courts were precisely to the opposite effect. The Custodian's initial letter to each petitioner (Pet. 33, J.A. 6, 29) stated that he intended to apply the

[10] On June 29, 1966, the President announced that the Office of Alien Property in the Department of Justice would close as of June 30, 1966. Remaining matters are to be handled by the part-time work of personnel in the Civil Division of the Department of Justice. As of April 30, 1966, there were pending some 50 administrative claims, 450 accounts, and 30 cases in litigation. See Report of Office of Alien Property—Message from the President, 112 Cong. Rec. 14095 (daily ed., June 30, 1966).

post-war rate of exchange to the *yen* deposit claims in question under the "Judgment Day" rule of *Deutsche Bank* v. *Humphrey*, 272 U.S. 517, and set forth the resultant dollar amount of each claim which he proposed to allow. These letters also advised petitioners that they could protest the proposed decision administratively if they so desired (Pet. 34-35) and that, when a final payment schedule was issued, they would be entitled to challenge the administrative determination in the district court. In addition, respondent informed petitioners of the provision of the United States Code which governed their right to judicial review, the court in which such review was to be sought, and the time within which the complaint had to be instituted. Indeed, the Custodian's letter, introduced by petitioners in the courts below as "typical of that sent to each of the plaintiffs" (J.A. 2), indicates that the Custodian simultaneously sent copies of the foregoing letters to petitioners' counsel. See, Pet. 36; J.A. 9 and 32.

The Custodian's second letter (J.A. 34)—which accompanied the final schedule of payments—advised each petitioner that "[i]f your claim is not shown on the Schedule, it is for the reason that the claim has been dismissed and disallowed by this office." It then went on to advise them, once again, of the authority, time, and procedure to challenge the administrative ruling in federal court.[11] No other commu-

[11] To be sure, respondent had requested in each initial letter that claimant's original certificates of deposit be submitted to him prior to payment or to forward a notarized statement of

nication is alleged to have taken place during the relevant period. Thus, the fundamental requirements of estoppel—a representation and change of position in reliance thereon [12]—are not present here. At no time did the Custodian represent that he would allow petitioners' debt claims other than at the post-war *yen* exchange rate. Consequently, petitioners could not have been relying on any assurances or representations by the Custodian when they did not seek judicial review of his ruling. In these circumstances, the court of appeals correctly stated (Pet. 25):

> Their failure to act cannot, we feel, be attributed to any misrepresentation, either affirmatively or negatively, by the [respondent]. Whatever may have prompted the [petitioners'] action, or lack

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why claimant could not submit the certificate. There was nothing arbitrary about this request. Since payment of those certificates was available in Japan, it was not unreasonable to assume that a claimant's unexplained lack of an original deposit certificate indicated he had previously obtained payment elsewhere. No bank would honor such a claim without similarly protecting itself against double payment by recovering the original obligation. Moreover, the submission of those certificates could hardly constitute an acquiescence in the Custodian's ruling in the face of the express provision in the letter requesting their submission that the certificates could be accompanied by "a statement of your objections to the allowance of the claim in the amount stated" (Pet. 35). Finally, *after* petitioners had failed to submit their certificates to the respondent, they were advised again of their right to judicial review (J.A. 34). Thus, the request for those certificates hardly served to lull petitioners into believing they could no longer bring a timely suit under section 34.

[12] See 3 Pomeroy, *Equity Jurisprudence* § 805 (5th Ed., 1941).

of action, we conclude it was not any misleading act or inaction on the part of the Government.[13]

3. In the litigation involving the claimants who took a timely appeal from the administrative decision that the "Judgment Day" rule required the application of the post-war *yen* rate of exchange to their claims, the government prevailed both in the district court and in the court of appeals. *Aratani* v. *Kennedy*,

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[13] Petitioners' suggestion (Pet. 15, fn. 7), that the sixty-day period in which to seek judicial review of respondent's denial of their claims is constitutionally inadequate is similarly without merit. In the first place, they were warned by the initial letters in 1958 and 1959 of the substance of the administrative determination. This was more than two years prior to the final administrative decision.

At any rate, a sixty-day period is the usual time prescribed for an appeal to the court from the ruling of a federal administrative agency. Thus, for example, a sixty-day period for filing a petition or complaint for review is prescribed by the Review Act of 1950, 5 U.S.C. 1031, 1034, with respect to the Federal Communications Commission, the Maritime Administration, and certain orders of the Secretary of Agriculture. Similarly, petitions for the review of orders of the Federal Trade Commission (15 U.S.C. 45(c)), the Securities and Exchange Commission (15 U.S.C. 78y), the Civil Aeronautics Board (49 U.S.C. 1486), the Federal Power Commission (16 U.S.C. 825*l*(b)), and the Secretary of Health, Education and Welfare under the Social Security Act (42 U.S.C. 405(g)), must be brought within 60 days from the the final order of the administrator. See also 7 U.S.C. 608c(15)(B), limiting to 20 days the time in which to seek review of certain marketing orders promulgated by the Secretary of Agriculture. See 3 Davis, *Administrative Law Treatise* § 23.03 (1958). Sixty days is also the time in which to appeal to a court of appeals in a case in which the United States or an officer or agency is a party. Rule 73(a), Federal Rules of Civil Procedure.

supra. Had that litigation been pressed to a conclusion in this Court and the decisions of the lower courts reversed, petitioners' claims would not have been affected. A reversal on appeal does not inure to the benefit of parties who do not join in the appeal. *Ackermann* v. *United States*, 340 U.S. 193; *Annat* v. *Beard*, 277 F. 2d 554 (C.A. 5), certiorari denied, 364 U.S. 908. Petitioners are in no better position because, in lieu of continuing that litigation further, the parties to that protracted proceeding believed their interests best served by a compromise settlement.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

JOHN W. DOUGLAS,
Assistant Attorney General.

DAVID L. ROSE,
RICHARD S. SALZMAN,
Attorneys.

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